

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDEPENDENT POWER TANZANIA LTD.,

07 CV 10366 (AKH)

Plaintiff,

vs.

DECLARATION

THE GOVERNMENT OF THE REPUBLIC OF TANZANIA,

Defendant.

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**DECLARATION OF ROBERT C. SENTNER**

Robert C. Sentner declares under penalties of perjury that the following is true and correct:

1. I am a member of Nixon Peabody, LLP, attorneys for Independent Power Tanzania Ltd. ("IPTL"), plaintiff in this action. I submit this Declaration in opposition to The Government of The Republic of Tanzania ("GOT") motion to dismiss the complaint.

2. Attached as Exhibit A is a copy of pages of the transcript of the arbitration that was conducted between IPTL and Tanesco with respect to the Power Purchase Agreement. That arbitration was held under the auspices of the International Centre for the Settlement of Dispute Resolution. I appeared as counsel for IPTL in that arbitration, and have personal knowledge of the proceedings. Hunton & Williams, counsel for the GOT in this action, appeared in that arbitration on behalf of Tanesco.

3. As set forth in Exhibit A, representatives of the Government of Tanzania were present at the arbitration. They included, among others, Ms. Anna Muganda, Special Advisor to the President of GOT, Mr. Patrick Rutabanzibwa, GOT's Permanent Secretary of the Ministry of Energy and Minerals, and Mr. Sazi Salula, of the Attorney General's Chambers of the GOT.

Notably, Mr. Salula has now submitted a Declaration in this case in support of GOT's motion to dismiss the Complaint. Hence, while Mr. Salula is technically correct when he states that the GOT was not a party to that arbitration (Salula Declaration, ¶ 5), the fact is that the GOT, which guaranteed Tanesco's obligations under the Power Purchase Agreement, was present during, and participated in, that arbitration.

4. Annexed as Exhibit B is a copy of an October 22, 1997 letter from the World Bank in Washington DC to the Government of Tanzania. This letter was introduced by IPTL as an exhibit in the arbitration. Annexed as Exhibit C is a copy of a newspaper article dated October 10, 1997. That article was also introduced as an exhibit in the ICSID arbitration.

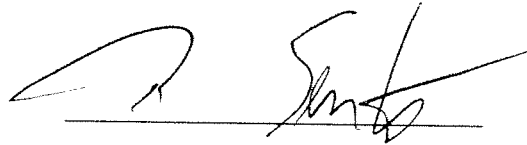
5. The financial model that is incorporated into the Final ICSID Arbitration Award, and governs the method of calculating capacity payments under the PPA, was negotiated between the parties primarily in the offices of Hunton & Williams in Washington D.C. Hunton & Williams, which represented Tanesco in the ICSID arbitration, represented it in the negotiations that led to the agreed-upon financial model. That financial model was incorporated into the Final Award issued in the arbitration.

6. Attached as Exhibit D is a copy of a report from the World Bank web site describing the World Bank, in Washington D.C., providing financing for the GOT energy sector.

7. Attached as Exhibit E are copies of articles that discuss GOT's business dealings with the United States company known as Richmond Development Company.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 8, 2008

A handwritten signature in black ink, appearing to read 'R. Sentner', is written over a horizontal line.

Robert C. Sentner

# **EXHIBIT A**

BEFORE THE INTERNATIONAL CENTRE  
FOR SETTLEMENT OF INVESTMENT DISPUTES

Fleet Arbitration Centre,  
Fulton House,  
Fleet Street,  
London

Monday, 13th March, 2006

TANZANIA ELECTRIC SUPPLY  
COMPANY, LTD.,

Claimant,

- against -

INDEPENDENT POWER TANZANIA LTD.,

Respondent.

ICSID Case No.ARB/98/8

Before:

MR KENNETH ROKISON QC

(CHAIRMAN)

JUDGE CHARLES BROUWER

ANDREW JOHN ROGERS QC

-----  
MR ROBERT W HAWKINS assisted by MR JOHN JAY RANGE and MR BRETT A. BAKKE of Hunton Williams, Washington DC appeared for the Claimant.

MR ROBERT SENTNER assisted by MR CHRIS PAPARELLA and MISS NANCY HILL of Nixon Peabody, New York, appeared for the Respondent.

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Transcribed from Tape by  
Harry Counsell & Co.,  
Cliffords Inn, Fetter Lane, London EC4A.1LD  
Tel: 0171-242 9346  
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PROCEEDINGS  
DAY ONE  
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BEFORE THE INTERNATIONAL CENTRE  
FOR SETTLEMENT OF INVESTMENT DISPUTES

Fleet Arbitration Centre,  
Fulton House,  
Fleet Street,  
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MR KENNETH ROKISON QC  
(CHAIRMAN)  
JUDGE CHARLES BROUWER  
ANDREW JOHN ROGERS QC

-----  
MR ROBERT W HAWKINS assisted by MR JOHN JAY RANGE and MR BRETT  
A. BAKKE of Hunton Williams, Washington DC appeared for  
the Claimant.

MR ROBERT SENTNER assisted by MR CHRIS PAPARELLA and MISS  
NANCY HILL of Nixon Peabody, New York, appeared for the  
Respondent.

-----  
Transcribed from Tape by  
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-----  
PROCEEDINGS  
DAY ONE  
-----

Monday, 13th March, 2000

THE CHAIRMAN: If everybody is ready we are probably a few minutes late. First of all, good morning to you all. I said "Good morning" informally to some of you but not to all, but a formal "Good morning" from the Tribunal. Welcome to London, welcome to the Fleet Arbitration Centre, and to this hearing in the ICSID case of TANESCO and IPTL.

May I first of all present to you apologies for absence. Margereta Stevens, from The World Bank who, as you know, has attended all our previous meetings has come to London but unfortunately has been taken ill. She has probably got 'flu, she is not feeling very well and does not think it would be sensible to come and distribute her sickness around everybody else. But she will be available to be called if any administrative problems which we cannot solve need to be solved.

Just a few administrative matters, if I may. You were kind enough to send to Margereta Stevens, who sent to us, a list of those who would be attending. If there are any additional people who have come and attend the hearings we would like that to be indicated to us on a daily basis, but we have the list of those who intended to come. That can be done in writing in the course of the day.

MR HAWKINS: Could we do it on the record, and I would be happy to do it again in writing.

THE CHAIRMAN: Yes, certainly, by all means.

MR HAWKINS: We have everyone here who we said would be here except one, Mrs Wandiva, the general counsel of TANESCO has not arrived but we are pleased to have with us, I am about to tell you, that is why I broke in, we are pleased to have with us Miss Anna Muganda who is a special adviser to the President of the United Republic of Tanzania - Welcome.

THE CHAIRMAN: Thank you very much. Now, can I come straight away to the question of sitting hours. I hope that you do not mind that we advanced the hearing this morning by half an hour although there is work to be done in sorting out

BEFORE THE INTERNATIONAL CENTRE  
FOR SETTLEMENT OF INVESTMENT DISPUTES

International Dispute Resolution Centre Ltd  
8 Breems Buildings  
London EC4A.1HP

Thursday, 20th July, 2000

TANZANIA ELECTRIC SUPPLY  
COMPANY, LTD.,

Claimant,

- against -

INDEPENDENT POWER TANZANIA LTD, .

Respondent.

)  
)  
)  
) ICSID Case  
No.ARB/98/8  
)  
)  
)  
)

Before:

MR KENNETH ROKISON QC  
(CHAIRMAN)  
JUDGE CHARLES BROWER  
ANDREW JOHN ROGERS QC

-----  
MR ROBERT W HAWKINS assisted by MR JOHN JAY RANGE and MR BRETT  
A. BAKKE of Hunton Williams, Washington DC appeared for the  
Claimant.

MR ROBERT SENTNER assisted by MR CHRIS PAPARELLA of Nixon  
Peabody, New York, appeared for the Respondent.

-----  
Transcribed from Tape by  
Harry Counsell & Co.,  
Cliffords Inn, Fetter Lane, London EC4A.1LD  
Tel: 020 7242 9346  
-----

PROCEEDINGS  
DAY ONE





11 am

1  
2 THE CHAIRMAN: I think we are now on record, and may I now  
3 formally welcome everyone to this session of the Tribunal  
4 in TANESCO and IPTL. Perhaps each day we could have, for  
5 the record, a list of those who are attending and in  
6 accordance with our informal discussions I think it is  
7 for you, Mr Hawkins, to begin.

8 MR HAWKINS: Yes, Sir. Before I begin I would, for the  
9 record, like to introduce to the Tribunal the  
10 representatives of TANESCO and the Government of Tanzania  
11 who are here with us today.

12 I will just go down the row to my right. Next to Mr  
13 Beardsworth is Mr Nimrod Mkono whom you have met  
14 previously from Dar es Salaam - what is the name of your  
15 firm?

16 MR MKONO: (?) Mkono.

17 MR HAWKINS: To Mr Mkono's right is Mr Luhanga, the managing  
18 director of TANESCO. To Mr Luhanga's right is Mrs  
19 Wandiba, who is the general counsel of TANESCO. Next to  
20 Mrs Wandiba is Mr Patrick Rutabanzibwa, the Permanent  
21 Secretary of the Ministry of Energy and Minerals. To his  
22 right is Mr Sazi Salula from the Attorney General's  
23 Chambers of Tanzania.

24 Members of the Tribunal, for the reasons outlined in  
25 TANESCO's July 5, 2000 letter, TANESCO will not proceed  
26 further at this time with respect to its bribery claims.  
27 We do, however, request an extension of time to present  
28 our case with respect to bribery, and the reason for the  
29 requested extension of time is that the investigation of  
30 the matter of bribery is ongoing in Tanzania and TANESCO  
31 would like to have an extension of time in order to gain  
32 the benefit of any facts which are developed during the  
33 course of that investigation.

1 Mr Rutabanzibwa is here this morning and I would ask  
2 the Tribunal to hear him very briefly to give you a sense  
3 of the state of the investigation, where it has been and  
4 what is the current anticipation or estimated length of  
5 the investigation, although one can never predict these  
6 things with any degree of certainty. With the leave of  
7 the Tribunal I would introduce Mr Rutabanzibwa.

8 MR SENTNER: If I might, I had not been prepared for this,  
9 Mr Rotabanzibwa was a witness here. For him to start  
10 telling the Tribunal about these bribery claims at this  
11 point, I am not particularly comfortable with that. What  
12 they are asking for, I think what their position is that  
13 they need more time to investigate this. I do not know  
14 why we need Mr Rutabanzibwa to describe what the  
15 investigation is involving or how long it is going to  
16 take.

17 MR HAWKINS: Just for clarification, Mr Rutabanzibwa will  
18 not be discussing the merits at all, just the status and  
19 brief history of the investigation and its anticipated  
20 length. No discussion of merits of the bribery claim, or  
21 any evidence that has been developed to date.

22 JUDGE BROWER: I am sorry, his position is?

23 MR HAWKINS: He is the Permanent Secretary of the Ministry  
24 of Energy and Minerals, which is the agency, the Ministry  
25 within the Tanzanian Government that has oversight  
26 responsibility with respect to TANESCO.

27 THE CHAIRMAN: I think the view of the Tribunal is that any  
28 submissions in relation to an application such as this,  
29 it is necessary that they should be made by lawyers, but  
30 anything that Mr Rutabanzibwa may say will not be  
31 regarded as evidence for any purposes whatever. We are  
32 not hearing him as a witness and it will not be subject  
33 to cross-examination and it will be a matter obviously  
34 for the Tribunal to decide the extent to which it takes

1 into account what he says, accepts it or otherwise, for  
2 the purpose of the application, just as they would in  
3 relation to any submission made by counsel. So I think  
4 the Tribunal's view is that we will hear Mr Rutabanzibwa  
5 with those qualifications.

6 MR HAWKINS: Yes, Sir.

7 THE CHAIRMAN: Thank you.

8 MR PATRICK RUTABANZIBWA, Called

9 THE CHAIRMAN: Yes, Mr Rutabanzibwa?

10 A. Yes, very briefly, just the chronology. The Prevention of  
11 Corruption Bureau in Tanzania began investigating  
12 allegations of corruption, having been involved in the  
13 procurement of the power purchase agreement in late ---

14 JUDGE BROWER: Could you speak up a little bit so we might  
15 hear better.

16 A. Yes. The Prevention of Corruption Bureau began  
17 investigating allegations regarding corruption in the  
18 procurement of the Power Purchase Agreement in late 1997,  
19 but the investigations were tentative. At that time the  
20 IPTL project had already begun to have problems, and  
21 there was a little bit of controversy surrounding the  
22 project, particularly tariff issues. The Prevention of  
23 Corruption Bureau continued until 1998 and then in 1999  
24 it teamed up with a professional investigative firm,  
25 DSFX, to continue looking at these issues. That is when  
26 really the investigation was carried out in earnest.

27 MR ROGERS: Well, in fact it was in 1998 that this  
28 DSFX organisation started, was it not?

29 A. Yes, they had a tentative, an exploratory look at these  
30 issues in 1998, but they teamed up with the Prevention of  
31 Corruption Bureau in March, 1999. After that there was a  
32 lull in the investigation until early 2000. This explains  
33 why there has not been all that much progress in looking  
34 into these issues.

1           The Government has now decided to also involve the  
2 criminal investigations department in the Ministry of  
3 Home Affairs, in order to support the Prevention of  
4 Corruption Bureau.

5           The Prevention of Corruption Bureau has had capacity  
6 problems, not enough staff, not enough experience, it is  
7 only now being strengthened in order to assist the  
8 Government. There is also the complication that the  
9 investigation now, after the preliminary work, the  
10 investigation necessarily has to focus on very senior  
11 officers within the Government, and this partly explains  
12 why there has not been all that much progress.

13 MR   ROGERS: But when you say there has been a lull, there  
14 was a report in January, 1999 by DSFX recommending a  
15 further phase. Did that ever occur - phase 3?

16 A.   Yes, and no. It is very difficult to really say because  
17 even in the Government there has been a lot of  
18 controversy about whether indeed an investigation has  
19 been completed. Some within Government would say we have  
20 done all we can, and we have discovered nothing, while  
21 others will say "Look, there's an awful lot more to do".  
22 It is the view of the Government at this point in time  
23 that there is an awful lot of investigation that still  
24 has to be carried out. I think that is why the Criminal  
25 Investigations Department, which has more manpower, and  
26 probably more experience than the Prevention of  
27 Corruption Bureau, has been engaged to assist in this  
28 investigation.

29 JUDGE BROWER: I am sorry, Mr Rogers' question was, was  
30 phase 3 of the DSFX investigation that was proposed at  
31 the end of the materials that had been submitted to us,  
32 was that contracted for and then carried out, or was it  
33 not contracted for?

34 A.   No, it has not been fully carried out as proposed.

1 Q. And is it correct that at some point the Prevention of  
2 Corruption Bureau has declined to co-operate further with  
3 DSFX?

4 A. I would not say it has declined to co-operate further,  
5 but there has been debate within the Prevention of  
6 Corruption Bureau as to whether the collaboration with  
7 DSFX has a sound legal basis.

8 Q. And to what part of the Government is the Prevention of  
9 Corruption Bureau subordinate? Is it within a Ministry,  
10 or the Office of the President, or where?

11 A. It is in the Office of the President, it reports directly  
12 to the office of the President

13 Q. And the Criminal Investigation Division is part of what?

14 A. The Ministry of Home affairs.

15 THE CHAIRMAN: In the light of the application that is being  
16 made I am in a sense less interested in why the  
17 investigation has not been completed but I am rather more  
18 interested in what is going to be done in the near  
19 future, what remains to be done, and when is it going to  
20 be done, because this application is an application for  
21 an extension of time, and I want to know on what basis,  
22 whether that is answered by you, Mr Rutabanzibwa, or  
23 whether it is something that is dealt with by Mr Hawkins.  
24 As I say, I am less interested in an explanation as to  
25 what happened in the past than some clarification as to  
26 what is intended to happen in the future.  
27 as to what is intended to happen in the future.

28 A. Yes. I would like to defer to Mr Hawkins and Mr Mkono on  
29 what is to be, but I have been informed by the Director  
30 of Criminal Investigations that if he were to be given  
31 one and a half to two months he believes he would stand a  
32 good chance of concluding the investigation, although I  
33 must caution that it is very difficult to predict. Even  
34 he admits that.

# **EXHIBIT B**

WORLD BANK AFTU1 202 473 8301  
WORLD BANK AFTU1

NO. 1638 P. 2/4

The World Bank  
Washington, D.C. 20433  
U.S.A.

CALLISTO E. MADAYO  
Vice President,  
Africa Region

October 22, 1997

His Excellency  
Benjamin William Mkapa  
President of the Republic of Tanzania  
Dar es Salaam, Tanzania

Phone: 255 51 113 425

Your Excellency:

*Tanzania's Power Sector Development Program*

Further to our meeting in Dar es Salaam, I am writing you to express our concern about recent developments in the power sector, in particular the decision to proceed with the Independent Power Tanzania Limited (IPTL) power project. This project, which received Government endorsement in mid-1995, is at an advanced stage of implementation; yet fundamental questions regarding its technical and economic feasibility remain unanswered.

Based on the available information, we believe that the IPTL project proposes technology not fully compatible with the Tanzanian power system, will lead to significant and unnecessary tariff increases, thereby threatening the financial viability and sustainability of TANESCO and the sector, and will significantly reduce Tanzania's ability to attract private investment to the sector. Nor will this project resolve the present energy shortages. This point is underscored by the fact that, at present, TANESCO's diesel and gas turbines are running at about 50 percent utilization because of a lack of cash to purchase fuel. In our view, the under-utilization of installed power generation capacity is a direct result of TANESCO's precarious financial position, which will be further undermined by the IPTL project.

Over the past year, my staff have expressed concern about TANESCO's financial performance and poor liquidity situation caused by TANESCO's inability to collect full and timely payments for electricity consumption from Government agencies and parastatals. More recently, in our July 11, 1997 letter to H.E. Daniel Yona, Minister of Finance, we suggested the actions which we believe are required to assure TANESCO's survival, and its ability to provide reliable electricity to support economic growth, and we



WORLD BANK AFTU1

NO. 1638 P. 3/4

-2-

October 22, 1997

expressed concern about the high cost to the economy of load shedding. We also raised concerns about the impact of the IPTL power project on the financial viability and sustainability of the sector.

Although we have had a long-standing and productive relationship with the Government in the power sector, we have found it difficult to obtain information on this project. Indeed, it is possible that we are not well informed about all the details concerning the structure and contractual and commercial arrangements of this project. However, based on the information available, our view is that this project is not in the short term or long term interests of the people of Tanzania, and in particular, it is not consistent with maintaining the cost of power as low as possible. Let me state briefly why we think it vital to review the terms and conditions of the IPTL contract as a matter of urgency:

- Given current planning assumptions (based on the completion of the Kihansi Hydropower and Songo Songo projects), an additional 100 MW of generation capacity is not needed until 2004. If this assumption proves correct, electricity consumers will be required to pay more than \$50 million annually for up to five years to support an investment which is not needed, since TANESCO will have to pay for the IPTL project regardless of whether it dispatches energy from the plant or not.
- Even if 100 MW of capacity were needed, there are other lower cost alternatives available to Tanzania. We estimate the average cost of IPTL power per kWh to TANESCO over the 20-year Power Purchase Agreement period would be more than two times the price of TANESCO's present average retail tariff. This will require a very steep tariff increase to TANESCO's average selling price beginning at the time the IPTL plant is commissioned.
- For an investment of such magnitude and importance, we are concerned about the lack of transparency and openness that resulted in Government commitments to the IPTL project. This concern is heightened by the fact that it does not appear that the technical, financial and economic aspects of this project, and the consequences it will have on sector development, have been adequately reviewed.

I believe we are in full agreement that Tanzania's development program is dependent on the provision of sufficient, reliable and "least cost" power to support economic growth. TANESCO's financial situation, however, is now threatening not only the power sector, but the country's economic recovery program. It is important, therefore, to address the structural problems of the sector through rational investments that promote efficiency. If the above analysis is correct, the IPTL project will not solve the systemic problems in the power sector; but instead will add unnecessary costs to the price of power, jeopardize the sustainability of TANESCO and the sector, and undermine Tanzania's competitiveness. The result will likely be perceived as major deterrents to future private investment in, as well as further donor support for, the power sector.

WORLD BANK AFTU1 202 473 8301  
WORLD BANK AFTU1

NO. 1638 P. 4/4

-3-

October 22, 1997

The construction of the IPTL project is reaching a point where the Government's options may disappear, and the Tanzanian consumer will have no choice but to pay a substantial amount for power generation capacity which is not needed for about five years.

In conclusion, I would urge you to consider all options, and move quickly and decisively to avoid placing Tanzania in a position where the IPTL project may have dire consequences for the development of the power sector and on economic growth. As always, I am committed to doing whatever I can do to assist you in this regard.

Sincerely yours,



Callisto E. Madavo

# **EXHIBIT C**

Attn: Julio  
Fax: 5191316



# Business

FRIDAY OCTOBER 10, 1997

**MDI FINANCE FIXED DEPOSITS**

**8.85%**

**EFFECTIVE RATES p.a.**

MONTHS	1.5 & above	3	6	12
1.5 & above	8.85%	8.85%	8.85%	8.85%
3	8.85%	8.85%	8.85%	8.85%
6	8.85%	8.85%	8.85%	8.85%
12	8.85%	8.85%	8.85%	8.85%

**MDI FINANCE LTD.**

**IMF help  
no  
panacea  
for  
Indonesia  
ills, say  
analysts**

Jakarta: Financial aid sought by Indonesia from the International Monetary Fund and other agencies to help the nation over its worst economic crisis in decades will not produce a magic cure, analysts said. They said the root problem of the crisis - a surge in corporate debt which is both responsible for and is exacerbated by the fall in rupiah - cannot be solved.

Dar es Salaam: The World Bank has threatened to withdraw funding for Tanzania's US\$320 million electricity project unless the government stops another power project financed by Malaysian businessmen. Energy and minerals ministry principal secretary Patrick Mutalanzibwa told AFP that the bank had written to his ministry and the finance ministry expressing concern over the US\$170 million (RM611.7 million) private project, warning that if implemented, it will push up power sales.

The power project is to be carried out by Indohydro.

Joint Power Tanzania Ltd, a joint venture between Malaysia's Mechmar Corp (M) and Tanzania's Engineering and Marketing Ltd. To fund the project, IPTV, which is 70% owned by KLSSE listed Mechmar, signed a syndicated term loan facility of US\$105 million (RM316 million) with two Malaysian banks - Sime Bank Bhd and Bank Bumiputra Malaysia Bhd. IPTV, which will own and operate a power plant, is expected to be paid about eight US cents a kilowatt by the state-owned Tanzania Electric Supply Company (Tanesco).

Sources at the treasury also told AFP that the bank

is not happy with the Malaysian project, which is aimed at generating 115mw of power, "because it suspects that its actual cost has been tripled."

Mutalanzibwa said, however, that the government is looking into the issue with a view to ironing out differences with the World Bank, although other sources in the ministry also said that Tanzanian President Benjamin Mkapa has already ordered a review of the private project.

The power plant, to be located at Tegela here, is the first privatised project in Tanzania as well as the first independent power producer in East Africa.

The World Bank is to provide US\$200 million (RM602 million) to the Tanzanian government through its lending arm, the International Development Agency, for the gas-to-electricity project in Songosongu, 22km south of here.

Two Canadian firms, Ocelot Energy Inc and Trans-Canada Pipelines, are also to inject an additional US\$50 million, while the remaining US\$70 million is to be raised through various international financing institutions.

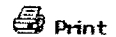
The Canadian financiers have already expressed concern over the delay in implementing the project, which was scheduled to start in the second quarter of this year and involves construction of a gas processing plant on the Indian Ocean island of Songosongu, a pipeline to Dar es Salaam and the power plant.

The World Bank also recently gave other conditions necessary for the release of the loan for the project, including raising of power rates by Tanesco and clearing of a US\$15 million debt in outstanding bills owed to the company by the government.

Tanesco and the Tanzania Petroleum Development Corp are also part of the Songosongu gas-to-electricity project.

## Stop Mechmar's Tanzania project, says World Bank

# **EXHIBIT D**



## Tanzania Obtains Credit For Emergency Power Supply

News Release No:2004/403/AFR

Media Contact in Washington:  
Herbert Boh (202) 473 3548  
[hboh@worldbank.org](mailto:hboh@worldbank.org)  
Aby Toure (202) 473 8302  
[akonate@worldbank.org](mailto:akonate@worldbank.org)

**Washington DC, June 8, 2004** – The World Bank today approved an International Development Association (IDA) credit of US\$43.8 million equivalent to assist the Government of Tanzania in implementing emergency measures that would avert a prolonged shortage of electricity supply due to extended drought affecting Tanzania's predominantly hydropower system.

While only 10 percent of the population in Tanzania has direct access to electricity, the impact of load shedding – on the order of about 27 percent of the country's electricity requirements – would affect a much larger segment of the population. This includes industrial and commercial firms and their workforce, as well as the provision of social services to the public at large.

The IDA credit will fund an emergency plan aimed at enabling Tanzania's electricity company TANESCO, to pay for fuel and energy purchases that would prevent load-shedding over the next eight months.

*"The project will prevent a contraction of economic activity, service delivery and the loss of jobs that would be inevitable during prolonged periods of electricity shortage",* explained **Karen Rasmussen, the World Bank's Task Team Leader** for the project.

Severe drought caused the water inflows to the overall hydropower system were two thirds of the average inflow over the past 25 years. The 2003 water inflow to the Mtera reservoir, the most important reservoir in Tanzania's hydropower system, was just 40 percent of the 60-year average inflow.

Over the past three years, significant achievements have been realized in the power sector: a substantial financial and operational turn around of TANESCO, the public power utility, has occurred under a performance-based management contract. Also, to address Tanzania's over-dependence on hydropower, private investment was mobilized to develop its gas reserves for power generation. These infrastructure facilities, to be commissioned in July 2004, will provide a least cost thermal alternative to hydropower. In the midst of this positive course of actions, Tanzania was hard-hit by a drought in 2003 which has adversely affected TANESCO's ability to generate electricity from hydropower.

According to **Rasmussen**, the shortage in electricity supply, which could extend to 2005 would represent about 27 percent of projected energy requirements in 2004, and could result in a severe contraction of economic activity and services estimated at about 6 percent of Tanzania's GDP.

The IDA credit is provided at the standard commitment fee of 0.5 percent, a service charge of 0.75 percent, and a maturity of 40 years, including a 10-year period of grace. The Government of Tanzania will finance the project with an additional US\$23 million. Also, to meet the country's emergency power needs, TANESCO will mobilize about US\$44 million of private investment for the installation of new gas-fired generation plant to run on indigenous gas.

For more information on the World Bank's work in sub-Saharan Africa visit:

# **EXHIBIT E**



# Origins of the Richmond energy scandal

FINNIGAN WA SIMBEYE

Dr es Salaam

**T**HE controversial awarding of a 100 megawatts power purchase agreement tender to a clandestine Houston, Texas-based Richmond Development Company has emerged as one of the biggest scandals in recent history.

Tabling the probe team's report in Parliament, Kyela MP Dr Harrison Mwakyeembe said senior government officials deliberately showed, "high powered grand graft courage," in favouring the American mailbox company win the tender well beyond its financial, technical and experience capabilities.

Dr Mwakyeembe who is not new to a game of courage, took the bull by its horns by clearly stating that pressure from the Prime Minister's Office which was thoroughly involved in the tendering process of the PPA, paid dividends when the company finally won the deal.

Dr Mwakyeembe, who in 2005 also publicly condemned South African Amalgamated Banks of South Africa (ABSA) for engaging in widespread violation of the country's banking sector rules, describing Absa managers at the National Bank of Commerce as criminal, earned himself the wrath of former Finance Minister Basil Pesambili Mramba who put pressure on him to resign as board member of NBC.

The forced resignation was reportedly blessed by former president Benjamin Mkapa, who defied moral principles of the highest public office by turning himself into an entrepreneur while at State House.

But in a history of its own making, never heard before in post single party Tanzania.

Dr Mwakyeembe's five member committee, re-wrote parliamentary history when their report clearly mentioned culprits of the disgraceful game by their trade names, position of authority and role in the politics of awarding the lucrative contract to the RDC.

THISDAY has since its inception in February 2006 made a keen follow up on the controversial American company, following its cronies, manoeuvres and ground tactics to secure the contract.

In the course of finding out details of the controversy, THISDAY, talked to former minister of energy and minerals, Daniel Ndihira Yona who in 2005 almost handed over a 1,150-kilometre Dar es Salaam to Mwanza oil pipeline project to the RDC.

Mr Yona who wanted to give the over 650km/- project to RDC, said he had already rejected the company following failure to provide even a detailed feasibility study on how it would undertake the project.

A local company, Africommerce International Limited (AIL) initiated the pipeline project which Yona wanted to give to the US company because of what he termed as failure by the AIL to implement the project since late 1980s. "When the third phase government finished its term on December 31 last

## THISDAY Richmond: Hidden truth revealed



I left office but we had rejected Richmond's proposal. As to what is happening now, you had better contact the current minister Dr Msabaha," Yona said.

The former minister then went on to dismiss allegations that he was a board member of the US company which was bailed out by CRDB Bank through the 1Mbn /- bond in order to secure a contract with Tanesco to supply 100 megawatts (MW) of power to the national electricity grid.

"Those reports are absolutely

untrue, I knew Richmond while at the ministry after they approached us to take over the Dar es Salaam to Mwanza oil pipeline project," Yona insisted.

The AIL, which had initiated the project in 1980s had spent over 15bn/- by 2005 when the former energy and minerals minister decided that the company had failed to implement the project over the years hence suggesting that RDC take it over.

After a long silence, Richmond resurfaced in the local media in 2006 when it was revealed that the company secured a last minute bond from CRDB Bank after failing to do as a pre-condition to import a 20 MW General Electric gas turbine to supply power to Tanesco.

The RDC is one of the four private power generating companies which were awarded a tender in 2006 to supply Tanesco with 100MW of power to ease load shedding caused by droughts.

But reports said the Texas-based company failed to import a 20MW gas turbine early this month due to failure to obtain a bank guarantee which was ultimately provided by CRDB Bank.

While serving as minister for energy and minerals prior to his removal last year, Dr Msabaha who also served as deputy to Mr Yona during the last five years of president Mkapa's administration, defended the RDC contract as vital to the country.

Investigations by THISDAY have established that RDC failed to secure a bank bond at home in the US and locally because of stringent US banks' demands on credibility and project viability of the loan seeker, a fact which

has been officially confirmed by the parliamentary probe team.

THISDAY's investigations of the RDC further came across the company's website which is jointly owned by Tanzanian born businessman Mohammed Gire and economist, Dr Mohammed Huque, who are both based in Houston, Texas. On its website, the company did not give any details on its finances other than giving a general notice on projects covered.

"RDC team has brought to financial close several projects totaling some \$500m (approx. 650bn/-). RDC's current development projects include civil constructions, oil pipelines and 200MW power plant, and a 200,000 bpd (barrels per day) refinery project in Brazil," the company said in the statement on its website.

Without naming where the other projects are specifically located, the RDC further said that it was undertaking the oil pipeline and a 60,000 seat national stadium project. The company however, said on its website that most of its projects are in East Africa.

"Richmond Development Company of Houston which is developing several projects in the East African nation of Tanzania hosted Tanzanian ambassador to the US, Honorable Andrew M. Daraja to Houston, Texas, from July 20 through to July 22, 2003," the website posted statement noted.

The RDC said projects currently under development include, "National Sports Stadium with seating capacity of sixty thousand spectators, 1,150kms of a petroleum product pipeline plus five terminals."



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## New report on Richmond deal says: Contract was signed in 'strange' circumstances

-Key contractual issues protecting TANESCO as the client were ignored  
-TANESCO's chief legal advisor didn't know who drafted the contract or what was in it  
-'Political influence' was the overriding factor in the contract negotiations

THISDAY REPORTER  
Dar es Salaam

THE highly-controversial Richmond power generation contract was signed at night and in strange circumstances, a new report by a government agency has asserted.

According to the report prepared by the state-run Public Procurement Regulatory Authority (PPRA), the Richmond deal signed last year not only contravened official government tendering procedures, but its apparent signing under the cover of darkness also raised eyebrows.

"The contract between TANESCO (Tanzania Electric Supply Company) and Richmond Development Company was signed in strange circumstances at night and at the Ministry of Minerals and Energy, with some contractual issues protecting the client having been ignored," says the PPRA report.

It now appears that TANESCO officials were literally bulldozed into signing a deal they had not even negotiated and without being given any room to review the draft contract before signing.

According to the PPRA's 2007 report on procurement, contract and performance audit of the state-run public utility firm, not even TANESCO's company secretary - as the company's chief legal advisor - was aware of "who drafted the contract" with the US-registered Richmond Development Company.

Furthermore, the report notes that there was no performance bond attached with the contract, which it says is highly unusual for such types of contracts.

The report cites 'political influence' and 'clear interference' in the tendering process by 'higher authorities' in government, but falls short of revealing the identity of the top government leader(s) involved.

"Political influence forced TANESCO to waiver from principles of the contract" it asserts, noting that the public utility firm was ordered to sign the contract with Richmond for the supply of 100MW thermal plant electricity even after 'conclusively' establishing the US company's non-responsiveness to the bid requirements and inability to deliver the services required.

A total of 26 companies initially approached the government for tender documents for the emergency supply of electricity early last year, but only eight actually tendered for the contract.

## Other new

### Media council boost

THE Media Council (MCT) is today signing an agreement with its partners for a grant (approx. 6.1bn/-) to fund the council's new strategic regional press club.

### Editorial: We out slavery

OUR country appears to have succumbed to the menace of human trafficking to a few greedy elites. An authoritative source says this country has a the dubious distinction of being a source, transit

### Former Nyerere blasts Mkapa

A CLOSE personal friend of Mwajuma Julius Nyerere, Butiku, has added to growing public criticism over former President Benjamin Mkapa's business activities at State House.

## Sports news

### 11 countries Cup

ELEVEN countries have made themselves ready for the Nyerere Cup International handball championship which will start on October 25-30 in

### Mandela invitational Cup final

These were Real Energy (UK), Aggreko International (UAE), Richmond Development Company LLC (USA), REMCP SPA (Italy), APGUM Company Limited (Germany), Globeleq Limited (UK), GAPCO (Tanzania) Limited and QUANTUS of Germany.

The PPRA report says that after opening the original bids, TANESCO found all eight firms to be non-responsive to the terms of reference, and at the same time found that "the government was already interfering with the procedures."

This led TANESCO to cancel the tender altogether.

However, it is stated that 'higher authorities' in government then recalled the bid documents submitted by all the eight bidders from TANESCO, and proceeded to effectively take over the bid processing exercise

The tender was eventually awarded to Richmond despite the fact that it had already been rejected by TANESCO.

To add more mystery to the whole affair, another company - Dowans Holdings S.A of the United Arab Emirates ? was unexpectedly brought into the picture last December to inherit Richmond's contract with TANESCO.

According to the PPRA report, this new arrangement between Richmond and Dowans appeared quite odd since "the contract between RDC (Richmond Development Company) and TANESCO did not provide for re-assignment of the contract to Dowans, but a subcontracting arrangement."

After conducting its own investigation in the face of a public outcry triggered by allegations of corruption in the whole Richmond deal, the Prevention and Combating of Corruption Bureau (PCCB) surprisingly announced last May that the investigation had found no improprieties in the deal.

Making the announcement at a news conference in Dar es Salaam, PCCB director general Edward Hosea made no mention of any possible political interference in the contract negotiations and its ultimate signing.

All the PCCB boss said was that at one point, the government formed a three-man special committee comprising the permanent secretaries at the Treasury and the Ministry of Energy and Minerals, and the attorney-general, to oversee the contract negotiations and advise the government accordingly.

However, the revelations now emerging from the new PPRA report would appear to seriously discredit the results of the investigation conducted by the state-run anti-corruption watchdog.

FORMER South Nelson Mandela attend next week final between the England.

### Coach lamer refereeing

THE Tanzania F (TFF) has been the standard of the ongoing Mair league can run s

THIS DAY

THURSDAY 7 FEBRUARY 2008

# Will he resign?

## THISDAY REPORTER

Dar es Salaam

**W**ILL he or will he not resign? That's the question going through the minds of many Tanzanians today after Prime Minister Edward Lowassa was conclusively linked to the 172.9bn/- Richmond power generation scandal by a parliamentary probe committee.

Pundits say it may now be virtually impossible for Lowassa to survive the imminent political fall-out after

being fingered by the Bunge committee that investigated the scandal as having exercised undue influence to ensure the contract was eventually awarded to the dubious Richmond Development Company LLC.

The chairman of the parliamentary probe committee, Dr Harrison Mwakyembe, announced in parliament yesterday that there was sufficient evidence suggesting that Lowassa and his close friend, Igunga lawmaker Rostam Aziz, had personal business interests in the Richmond

Continues on page 2



Dr Ibrahim Msabaha

## JK may be forced to reshuffle cabinet

### THISDAY REPORTER

Dodoma

**P**RESIDENT Jakaya Kikwete may now be forced to reshuffle the cabinet sooner rather than later after Prime Minister Edward Lowassa and several other senior ministers were implicated in the Richmond scandal.

Apart from naming Lowassa as a key player in the dubious deal, the parliamentary probe committee that investigated the contract also recommended the dismissal of several key cabinet ministers.

They include Attorney General Johnson Mwanjika and both the current and former ministers for energy and minerals, Nazir Karamagi, and Dr Ibrahim Msabaha, respectively.

The report findings tabled in Parliament yesterday by committee chairman Dr Harrison Mwakyembe, identified the three ministers as having played a key role in the awarding of the contract to Richmond under dubious circumstances.

"The committee recommends that the (current) Minister for Energy and Minerals, Nazir Karamagi, MP, who vigorously supported the transfer of



Nazir Karamagi



Johnson Mwanjika



TOP PICTURE - The report implicates Dr Lowassa and Igunga MP Rostam Aziz in the Richmond scandal.

Continues on page 2

C



From page 1

contract. According to Mwakyeembe, the only three people who knew the truth about the Lowassa-Rostam link to the deal were former energy and minerals minister Dr Ibrahim Msabaha, the ministry's permanent secretary, Arthur Mwakapugi, and the chairman of TANESCO's board of directors, Ambassador Fulgence Kazaura.

After being summoned on at least two different occasions, the three officials declined to explain the intertwined interests of Lowassa and Rostam in the Richmond contract.

"However, after being questioned under oath, Dr Ibrahim Msabaha, told the committee that he was just being made the sacrificial lamb in the whole affair," said Dr Mwakyeembe.

He added: "Ambassador Kazaura later told the committee off the record on November 30, 2007, that Richmond was a personal business project of the prime minister (Lowassa) and his main business partner, Rostam Aziz."

Dr Mwakyeembe said the committee has decided to spill the beans on matters said by Dr Msabaha and Kazaura in confidence due to the seriousness of the whole issue.

He noted that Ambassador Kazaura had also in January last year spoken before the parliamentary investments and trade committee about the link between Richmond Development Company LLC and Lowassa.

"It's quite obvious that for these 'loyal' civil servants, it would have been difficult for them to directly implicate the prime minister while under oath. Such actions would have required tremendous courage and enormous patriotism," he said.

Mwakyeembe said despite the apparent fear demonstrated by Dr Msabaha and ambassador Kazaura while under question-

## Will he resign?

ing, documentary, verbal and circumstantial evidence gathered from various other witnesses directly implicated the PM in the Richmond affair and "place him in an unenviable political situation."

"Rumours of the prime minister's direct involvement along with some of his close associates have spread almost throughout the country at an alarming level," he said.

He added: "The committee realizes that the rapid spreading of the rumours could have been contributed by his political enemies, but the relative ease in which the people have believed these rumours raises a lot of questions about the trust, confidence and integrity that he (Lowassa) built for himself in the society."

Dr Mwakyeembe said Rostam Aziz was sent a summons to appear before the parliamentary probe committee but dodged the grilling sessions purportedly because he was outside the country when the committee was sitting in Dar es Salaam.

Rostam was wanted for questioning on his links with the US-based Richmond Development Company LLC and Dowans Holdings S.A after more than five witnesses singled him out.

"He (Rostam) was also wanted by our committee to explain why the postal and e-mail addresses of his company, Caspian Construction Company Ltd, was being used by Dowans Holdings S.A. The committee was also given several names of employees of Caspian who also work for Dowans Holdings S.A," he said.

He said the former energy and minerals minister under former president Benjamin Mkapa's government, Daniel Yona, also dodged the committee when summoned to explain why he had given Richmond way

back in 2004 exclusive right of 18 months to develop a failed oil pipeline project.

In its recommendations, the parliamentary committee highlighted the PM's personal involvement in the dubious Richmond contract.

"The committee has documented, circumstantial and verbal evidence showing that undue influence and power (in favour of Richmond) was exerted by none other than the prime minister himself," says the report.

He said the parliamentary committee was dismayed by reports directly linking Lowassa as having deliberately favoured the Richmond company.

"Taking into due consideration the importance of the position held by the prime minister in supervising government operations and the entire national leadership in general, it is up to his own responsibility to weigh the seriousness of the report findings of our committee," says the report, implying that Lowassa must now take responsibility for his own actions.

Earlier yesterday, the Minister for Infrastructure Development, Andrew Chenge, tried to block the Richmond report from being tabled in Parliament on the grounds that government business in the House had not yet been concluded. He was overruled by the Speaker.

President Jakaya Kikwete arrived in Dodoma yesterday ahead of fiery parliamentary debates on the Richmond report findings scheduled to begin today.

Meanwhile, the CCM parliamentary caucus meeting was also scheduled to be held in Dodoma last night, with the Richmond report findings likely to dominate discussions.

Lowassa normally chairs the caucus meetings by virtue of his position as Prime Minister and leader of official government business in the National Assembly.

## Cabinet reshuffle looming

From page 1

the contractual obligations (from Richmond to Dowans), should be made accountable," says part of the recommendations of the report.

Msabaha, who is currently the Minister for East Africa Community, was particularly fingered for going against the country's laws and official cabinet decisions in favour of Richmond. "The committee recommends that the then minister for energy and minerals, Dr Ibrahim Msabaha (MP) and the Permanent Secretary, Arthur Mwakapugi, should face strict disciplinary action for deliberately putting the country into a contract with a briefcase company (Richmond) thus causing huge losses to the nation," says the recommendations of the report.

Apart from sacrificing several of his ministers, Kikwete may also have to re-arrange some senior other individuals in key government positions.

They include the Permanent Secretary in the Ministry of Energy and Minerals, Arthur Mwakapugi, the Commissioner for Energy, Bashir Mwindoko, and a senior state attorney, Donald Chidovu, who have all been

singled out by the parliamentary report for strict disciplinary action.

The committee also recommended disciplinary action against senior government officials who were part of the 17-member government negotiation team that finalised the contract talks with Richmond.

According to THISDAY findings, the government negotiation team was chaired by Singi Madata, assistant commissioner for debt policy in the Ministry of Finance.

Other government officials who took part in the controversial Richmond negotiation included Theophilus Bwaka, assistant commissioner for electricity in the Ministry of Energy and Minerals, and Dick Thewa from the Bank of Tanzania (BoT).

Also in the contract negotiations were Julius Sarota from the Ministry of Energy and Minerals, and Donald Chodawa, a state attorney with the AG's chambers.

Representing TANESCO in the talks were Stephen Mabada, Mohamed Saleh, Godson Makia, James Mtei and Wangwe Mwita.

The Richmond delegation, led by the company's director Mohamed Gire, also included Naem Gire, Gary Borges and Cuthbert Tenga (lawyer).



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### Tanzanian 'fraud' draws foreign flak

Juma Kwayera | Nairobi

23 October 2007 11:59

A political storm over corruption allegations in Tanzania could compel President Jakaya Kikwete to sack Prime Minister Edward Lowassa – and is already damaging the country's standing with international donors.

Tanzanian press reports in the past two months have linked Lowassa to a major financial fraud that precipitated 10 months of power-rationing last year.

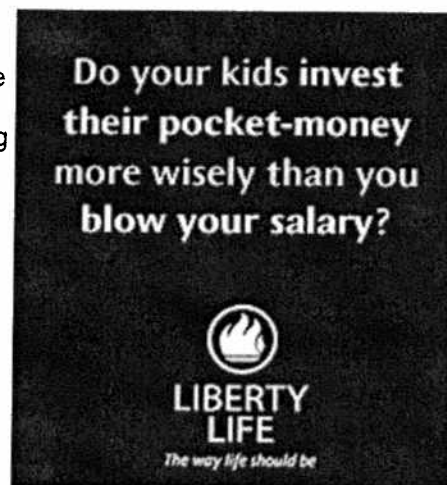
Since July this year independent newspapers have run articles questioning Lowassa's integrity after he allegedly approved a deal in which a US-based firm, Richmond Development Company, was awarded a \$115-million contract to supply power generators in 2005.

Instead, the company supplied second-hand jet engines that stalled barely three months after installation, leading to what is now referred to as "Richmondgate".

The allegations against Lowassa are contained in a report – dubbed the "List of Shame" – compiled by the political opposition, which points fingers at several other ministers whom the opposition wants sacked.

Lowassa distanced himself from the allegations last week through his press secretary, Said Nguba, who said: "The prime minister was never involved in the Richmond negotiations. All he did was to assume a general, overseeing role in government efforts to ensure the power-shortage problems afflicting the country at the time were urgently addressed."

ThisDay newspaper and the weekly, Kulikoni, said the perception of entrenched graft is exerting pressure on the president act decisively after development partners expressed concern. During the October 1 to 2 World



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Trade Organisation Africa regional conference in Dar es Salaam, German ambassador Ingo Herbert challenged the government to act, "as donors have become uncomfortable with the allegations". Herbert said: "The allegations of graft being levelled against some officials by opposition politicians are very serious; we would like the government to give its side of the story as soon as it possibly can."

Earlier this month the Dutch ambassador to Tanzania, Karel van Kesteren, also demanded "robust and credible" responses to corruption allegations.

"But it is not only the big corruption that bothers me; equally destructive for confidence in the country is corruption at lower levels, where the private interests of some influential individuals seem to carry more weight than the interests of the poor," said Van Kesteren. The head of the European Union mission in Tanzania, Peter Maddens, told reporters early this month that the EU was contemplating reviewing its national budget support to "track progress and performance across a range of issues, including public financial management at the government level".

"Freezing aid is not on our radar screen yet," he said. Kikwete defended his government in a national address this week, in which he accused the political opposition of "seeking [to gain] cheap political mileage."

"Even the PCCB [Prevention and Combating of Corruption Bureau] cannot pass judgement on suspects arrested on corruption allegations," Kikwete said. "There is no law of the jungle here. Ours is a country that treasures the principles of the rule of law and good governance. Let us not come to a situation where we will all become detectives, arresting officers, prosecutors and judges all rolled into one." The prospect of aid cutbacks elicited an angry response from Foreign Minister Bernard Membe who, several weeks ago, ordered foreign envoys to stop poking their noses into Tanzania's domestic affairs.

Meanwhile, four opposition parties -- Chadema, the Tanzania Labour Party (TLP), NCCR-Mageuzi and the Civic United Front -- announced this week that they would organise demonstrations to force the government to act against corruption.

TLP leader Augustine Mrema told a public rally in Dar es Salaam last week: "The president has not responded to our memorandum that contains a list of people perceived to be the kingpins of graft. We are now convinced that he has ignored pleas to address graft as a matter of national concern. We have resolved to organise countrywide civil disobedience to force the government to act."

In the memorandum, the opposition claims that the \$340-million bill for constructing a new central bank headquarters is 10 times higher than the real cost. The bank is one of the projects the opposition says "stink of corruption". -- © Guardian News & Media Ltd 2007

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